

## § 26.27

record of the proceeding to the Secretary or the Secretary's designee.

(f) *Time extensions.* The Secretary, or designee, in his or her sole discretion, may extend the deadlines or page limitations set forth in paragraphs (b) and (c) of this section. The Secretary or designee may also permit the filing of additional briefs, in his or her sole discretion.

(g) *Personal appearance.* There is no right to appear personally before the Secretary or designee.

(h) *Interlocutory rulings.* There is no right to appeal any interlocutory ruling by the hearing officer, except as provided for in § 26.27.

(i) *Objection not raised before hearing officer.* In reviewing the determination or order, the Secretary, or designee, shall not consider any objection that was not raised before the hearing officer unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(j) *Evidence in the record.* The Secretary or designee shall consider only evidence contained in the record forwarded by the hearing officer. However, if any party demonstrates to the satisfaction of the Secretary or designee that additional evidence not presented at the hearing is material, and that there were reasonable grounds for the failure to present such evidence at the hearing, the Secretary or designee shall remand the matter to the hearing officer for reconsideration in light of the additional evidence.

(k) *Ex parte communications.* The prohibitions of ex parte communications in § 26.3 shall apply to contacts with the Secretary or the Secretary's designee.

(l) *Determination.* The Secretary or designee may affirm, modify, reverse, remand, reduce, compromise, or settle any determination made or action ordered in the initial determination or order. The Secretary or designee shall consider, and include in any final determination, such factors as may be set forth in applicable statutes or regulations.

(m) *Written determination.* Where a request for Secretarial review has been timely made, the Secretary, or designee, shall issue a written determination within 30 days after receipt of the

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request for review, and shall serve it upon the parties to the hearing and the hearing officer. The Secretary, or designee, may extend the time in which a written determination must be issued by an additional 60 days for good cause shown in a written justification issued to the parties. The written determination of the Secretary shall be final. If the Secretary, or designee, does not act upon the request for review of a determination within 90 days of service of the request, then the initial determination shall be the final agency action.

### § 26.27 Interlocutory rulings.

(a) *Interlocutory rulings by the hearing officer.* A party seeking review of an interlocutory ruling shall file a motion with the hearing officer within 10 days of the ruling requesting certification of the ruling for review by the Secretary, or in cases arising under 2 CFR part 2424, with the Debarring Official. Certification may be granted if the hearing officer believes that:

(1) It involves an important issue of law or policy as to which there is substantial ground for difference of opinion; and

(2) An immediate appeal from the order may materially advance the ultimate termination of the litigation.

(b) *Petition for review.* Any party may file a petition for review of an interlocutory ruling within 10 days of the hearing officer's determination regarding certification.

(c) *Secretarial review.* The Secretary, or designee, or Debarring Official shall review a certified ruling. The Secretary, designee, or Debarring Official has the discretion to grant or deny a petition for review from an uncertified ruling.

(d) *Continuation of hearing.* Unless otherwise ordered by the hearing officer or the Secretary, designee, or Debarring Official, the hearing shall proceed pending the determination of any interlocutory appeal, and the order or ruling of the hearing officer shall be effective pending review.